IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : September 14, 2006

1. Criminal Appeal No. 445-DBA of 1996
State of Punjab Vs. Prem Sagar and others

2. Criminal Revision No. 507 of 1996
Rikhi Dev Malhotra Vs. Prem Sagar and others

Coram: Hon'ble Mr. Justice Virender Singh
Hon'ble Mr. Justice A.N. Jindal

Present : In Criminal Appeal No. 445-DBA of 1996

Mr. M.S. Sidhu, Senior Deputy Advocate General, Punjab for the appellant
Mr. R.B.S.Chahal, Advocate, for respondent nos. 1 to 3

In Criminal Revision No. 507 of 1996

Mr. Sapan Dhir, Advocate for the petitioner
Mr. R.B.S. Chahal, Advocate, for respondents

Virender Singh, J.

Vide this judgment we are disposing of aforesaid Criminal Appeal and Criminal Revision as the same are arising out of one and the same judgment dated 12.4.1996 of learned Sessions Judge, Jalandhar.

Record reveals that in Criminal Appeal No. 445-DBA of 1996, leave to appeal was granted qua Prem Sagar, Shaman Sareen and Smt. Sita Devi only whereas appeal is filed against all the seven respondents who have earned acquittal vide impugned judgment dated 27.8.1996. Criminal Revision No. 507 of 1996 is also filed against all the seven respondents and vide order dated 27.8.1996 it was ordered to be heard with the main appeal. The record further reveals that the instant revision does not stand admitted and it was simply ordered to he heard along with the main appeal. Therefore, we are focussing our attention with regard to the acquittal of aforesaid Prem Sagar, his wife Sita Devi and his son Shaman Sareen.

The facts of the prosecution case in short are as under:-

Kamlesh Kumari (since deceased) was married to Shaman Sareen alias Kala respondent in May 1983. Rikhi Dev Malhotra PW4 is her father. He alleged in his statement Ex. PH which is basis of the registration of the formal FIR that certain dowry articles were given at the time of marriage. Some gold ornaments were also given at the time of betrothal ceremony and other ceremonies. It is further alleged that at the time of marriage, Jagmohan Malhotra son of Rikhi Dev Malhotra had also come from England and Hira Lal Thapar his son-in-law (Rikhi Dev Malhotra) had also come to attend the marriage. On the asking of the respondent Prem Sagar golden ring and a woolen suit each were also handed over to them. After two days of the marriage when Kamlesh Kumari had come back to her

father's house, she stated that her in-laws were demanding scooter with a threat that she shall be turned out of the matrimonial home in case the demand was not met with. Consequently, he arranged a scooter make Vijay Super and delivered the same to the respondents. However, that scooter was registered in the name of Shaman Sareen respondent and the same was sold away after Shaman Sareen had left for Canada. It is alleged that when Kamlesh Kumari had asked for the deposit of the sale proceeds in her favour, she was given beatings by Prem Sagar and his son Parvesh Sareen (since acquitted). It is further alleged that in fact elder brother of Shaman Sareen (her husband) was badly injured in a car accident in Canada and in-laws of Kamlesh Kumari wanted to send her husband Shaman Sareen to Canada and for this purpose they had asked her to bring Rs 15,000/- from her parents. At that time Kamlesh Kumari was having daughter of 1½/2 years. The said amount was given to Shaman Sareen respondent. It is then alleged that when Shaman Sareen had left for Canada, Kamlesh Kumari was left at the house of her father in the state of pregnancy where she delivered a daughter. Her in-laws did not bother to see her at Ludhiana. Thereafter the complainant took Kamlesh Kumari and his grand-daughters to her in-laws house. At that time certain articles and cash were given to in-laws. It is then alleged that Shaman Sareen remained in Canada for about four years and during this period he (Rikhi Dev Malhotra) got prepared passports for his daughter and grand-daughters. However, Kamlesh Kumari was

given maltreatment and taunts by her in-laws that her daughters were consuming 2/3 kgs of milk. It is then alleged that Shaman Sareen had been writing to send tickets for Kamlesh Kumari and the daughters for flying to Canada as he was merely a taxi driver. It is then alleged that Shaman Sareen landed in Delhi Airport in the last week of June 1989 and after staying in Delhi for a few days came to Nawanshahr on 3.7.1989. In those days, the complainant had gone to Dehradun and Hardwar with his wife and other family members. On 5.7.1989 at about 3.30/4.00 PM, he was informed at Hardwar that his daughter Kamlesh Kumari was killed by her in-laws by administering some poisonous substance. He then came to Nawanshahr along with his wife on 6.7.1989 where he was told by his son-in-law and other members of the family that on 5.7.1989 at about 9.15 AM, Kamlesh Kumari was left in Civil Hospital, Nawanshahr where she had expired at 9.45 AM.

SI Surinder Kumar PW8 recorded the statement of Rikhi Dev Malhotra Ex. PH, made endorsement Ex. PH/1, upon which formal FIR Ex. PJ was recorded against the present three respondents and Parvesh Kumar son of Prem Sagar, his wife Smt. Kiran, Garish Dhir son of V.I.P. Dhir and his wife Neetu Dhir (since acquitted). It needs to be mentioned here that on 5.7.1989 SI Surinder Kumar on receipt of ruqa Ex. PC from Civil Hospital, Nawanshahr about the death of Kamlesh Kumari reached hospital, where Ram Murti, Badri Nath and Amit (daughter of the complainant) were

present there at the time when inquest report Ex. PF of the dead body was prepared. However, Amita had told SI Surinder Kumar that her fahter was informed telephonically and he would make a statement after reaching the hospital.

The post mortem examination on the dead body of Kamlesh Kumari was conducted by Dr. Nagin Dhaliwal PW3 along with other two doctors on 7.7.1989 at 11.00 AM and observed as under:-

> " Bleeding was present on nose. Frothly bleeding was present on the right angle of the mouth. Abrasion 1cm on the right side of the bridge of the nose. Lips were cyanosed. The diffused swelling on the lateral aspect of the right fore arm below the elbow joint was there. Diffused swelling under the medial aspect of the left fore-arm near the elbow joint was present.
>
> On dissection under-lying bones were not found fractured of both the arms. Scalp and skull were healthy. In the thorax ribs, cartilges, larynx and trachea were healthy. Right lung and left lung pieces were sent for chemical examination. Pieces from the heart, blood from heart, stomach and its contents, Loop of small intestine along with loop of small intestine along with loop of large intestines, pieces from liver, spleen and kidnies were sent for chemical examination. Urine from the Urinary bladder was also sent for Chemical

Examination. On examination external genitalia was healthy. Uterus was normal in size. Urine cavity was found to be empty."

Stomach wash was sent to the Chemical Examiner for knowing the cause of death and vide report Ex. PK/1 the aforesaid doctor opined that cause of death was aluminum phosphide poisoning (a pesticide).

The prosecution agency also sought opinion vide application Ex. PL from the aforesaid doctor with regard to certain injuries on the person of the deceased. Vide report Ex. PL/1, the doctor opined that the same could be sustained during scuffle. Some of the respondents were formally arrested on 12.7.1989 and others were arrested on 15.7.1989.

After the completion of the investigation, the present respondents and all the four co-accused were challaned and were charged under section 498-A and 304-B IPC. In the alternative Shaman Sareen respondent (husband) was charged under section 302 IPC substantively whereas his parents Prem Sagar and Sita Devi were charged under sections 302/34 IPC.

The prosecution in order to substantiate its case has examined the following eight witnesses:-

PW1 Dr. Surinder Kumar Gupta had examined Kamlesh Kumari on 5.7.1989 at 9.30 AM. She was brought by Prem Sagar respondent father-in-law and other family members. The history which was

made available to the doctor was that she had consumed chloroquin tablets about one and a half hours back. Forced vomitting with warm saline water was tried. Thereafter she was shifted to the hospital. Stomach wash was also done. Endotracheal intubation were done and artificial respiration was started with ambu bag. Suction of throat secrtion was also done. This witness was also shown the report Ex. PA of the Chemical Examiner on the basis of which he opined that Aluminum phosphide was sufficient to cause death in the ordinary course of nature.

PW2 Hira Lal Thapar is brother-in-law (Jija) of the deceased. He talks of the demand made by in-laws of Kamlesh Kumari at different stages.

PW3 Dr. Nagin Dhaliwal had conducted the autopsy on the dead body of the deceased. Her finding is already depicted in the preceding paras. In her examination-in-chief, she states that she had opined that injury on the person of the deceased could be caused during the scuffle and in this regard she proves her report Ex. PL/1.

PW4 Rikhi Dev is the complainant. He reiterated his case with regard to dowry demand and other aspects.

PW5 Surinder Kumar son of Ram Parkash states that on 2.7.1989, he had gone to Nawanshahr to see his relations. In the evening he went to the house of Prem Sagar respondent where Kamlesh Kumari (since deceased) was all alone in the house. She disclosed to him that her husband Shaman Sareen respondent had come back from Canada and was

not behaving properly with her. He was insisting her that if she wanted to go to Canada, she should bring Rs 50,000/- from her parents. He then states that Kamlesh Kumari had disclosed to him that she had already brought money many times from her parents and this time she was feeling shy to raise demand of Rs 50,000/-. He then states that he told Kamlesh Kumari that he would pass this message to her parents who had gone to Hardwar. He further states that he was also informed by Kamlesh Kumari that she was being maltreated by her in-laws.

PW6 Ravi Dutt is a witness of extra judicial confession before whom Prem Sagar and Shaman Sareen had allegedly confessed their guilt on 8.8.1989 and requested him get the matter compromised. He states that Shaman Sareen had told him that he had made a demand of Rs 50,000/- from Kamlesh Kumari to which she refused. He had also told Kamlesh Kumari that he did not like her and he and other accused had decided to do away with her so that he (Shaman Sareen) could contract second marriage. He further disclosed that he had brought pesticide and on 5.7.1989 his father Prem Sagar, mother Sita Devi had caught hold Kamlesh Kumari by arms and legs and he had administered pesticide to her. This witness further states that whatever was stated by Shaman Sareen was admitted to be true by his father Prem Sagar respondent. He then states that on 8.8.1989 he had gone to the house of Rikhi Dev Malhotra to inform him about the aforesaid confession and to explore the possibility of settlement between

the parties but Rikhi Dev had not accepted the proposal saying that he could wait for the verdict of the Court. He then states that thereafter on 10.8.1989 he went to Prem Sagar and informed him that he was not willing to enter into any settlement.

PW7 SI Som Nath had partly investigated the present case.

PW8 SI Surinder Kumar is the Investigating Officer. The investigation conducted by him, in brief, is already reflected in the preceding paras.

Affidavit of certain formal witnesses were also tendered into evidence. One Baldev Mitter had been given up as having been won over while other witnesses had been given up as un-necessary.

The plea taken by the respondents is that they have been falsely implicated in this case. In fact no demand was ever made from the deceased by her in laws. Prem Sagar respondent has depicted the entire incident in the shape of his plausible explanation in his statement recorded under section 313 of the Code of Criminal Procedure stating that Shaman Sareen respondent had returned from Canada after staying for about four years. He reached Delhi on 1.7.1989 and after staying for two days in Delhi had come to Nawanshahr on 3.7.1989. Shaman Sareen accused and his wife were to go to Ludhiana. In the morning time, he had told the deceased that they were to return in the evening time to attend dinner extended by his friend. She, however, insisted to stay for a night at Ludhiana. He, however, did

not agree to it. At about 7.30 AM Kamlesh Kumari was suddenly taken ill. Dr. R.K.Sharma was called. She on query had told that she had taken chloroquin tables. On the advise of the doctor, she was shifted to Civil hospital Nawanshahr without any loss of time. But she had expired after about an hour or two of her admission. Relations of the deceased were informed at Ludhiana. Many relations of Rikhi Dev had come to Nawanshahr and on their arrival cremation was fixed by mutual consultation. Before the cremation could take place, Jagmohan Malhotra, brother of the deceased came from England. Then relatives of the deceased held a meeting and after due deliberations, the case was got registered.

In defence the respondents have examined Joga Ram DW1, Brij Bhushan Khattar DW2, Dr. R.K.Sharma, DW3, R.K.Sharma Chief Manager, Union Bank of India DW4, SP Gupta, Chief Accounts Officer Telephone DW5, Jatinder Walia Agent DW6, R.K.Sharma DW7 and B.N. Sharma DW8.

After appreciating the entire evidence, the learned trial court has acquitted the present three respondents and their other four co-accused.

We have heard Mr. MS Sidhu, learned State Counsel, Mr. Sapan Dhir, Advocate appearing for the petitioner-complainant and Mr. R.B.S.Chahal, Advocate appearing for the respondents. With their assistance, we have also gone through the records.

Since Shaman Sareen was charged under section 302 IPC and

his parents were charged under section 302/34 IPC and all the respondents have also been charged under sections 498-A and 304-B IPC, the learned trial court has dealt with both the aspects separately.

Dislodging the case of the prosecution qua charge of section 304-B IPC, the learned trial court has found the following main flaws in the case of the prosecution:-

i)No explanation for delay much less satisfactory has come forth by the prosecution. In this regard the learned judge has entered into detailed discussion in paras 19 and 20 of the impugned judgment.

ii) Case of prosecution with regard to demand of money made on different occasions is not proved. So far as the initial demand of Rs 15,000/- made by respondent side for sending Shaman Sareen to Canada is concerned, the learned trial court has disbelieved the same on the basis of contradiction in the statement of the father of the deceased. With regard to another demand of Rs 5100/- the prosecution case has also been disbelieved. So far as amount of Rs 50,000/- on which the prosecution is harping a lot for the purchase of air tickets for taking Kamlesh Kumari and her two daughters to Canada, the finding of the learned trial court in para 25 of the impugned judgment is that the prosecution witnesses are not reliable.

iii) The evidence of Surinder Kumar PW5 is disbelieved. The learned trial court has come to a categoric finding that Surinder Kumar PW5 was not having a thick relations with Rikhi Dev, so the question of visiting the house of Prem Sagar at Nawanshahr did not arise.

Besides observing the aforesaid infirmities, the learned trial court has also discussed the entire documentary evidence in its impugned judgment and has come to a categoric finding that Kamlesh Kumari (since deceased) was getting various papers sent by her husband from Canada and immediately before her death he had brought Rs 30,000/- and therefore it cannot be believed that there was any harassment or maltreatment on behalf of the accused or there was any demand of payment of any amount. Statement of Jatinder Walia (DW6) an agent of Lufthansa Airways, Jalandhar has also been taken into consideration in which it is proved that tickets (Ex. DS and DT) were issued from Otawa (Canada) in the name of Mrs. Kamlesh Kumari and I.Sareen (child). These tickets were from Delhi to London and from London to Otawa. These were issued on 21.6.1989. A letter Ex. DX has also been proved to show that these tickets were not utilised. The other tickets Ex. DT/1` and DT/2 were also proved which was in the name of another child and Shaman Sareen (husband). It is observed that when Shaman Sareen has come to India with an intention to take his wife and children to Canada and has purchased tickets and admittedly he

had reached on 3.7.1989 whereas occurrence had taken place on 5.7.1989, it was not believable that he would cause harassment or maltreatment to his wife.

We have re-scanned the entire evidence once again and find no infirmity in the approach adopted by the learned trial court in discarding the case of the prosecution with regard to the charge of section 304-B/498-A IPC qua the present respondents. We do not find any perversity in the same. We are now left with other charge of section 302 IPC substantively framed against Shaman Sareen the husband and under section 302/34 IPC framed against Prem Sagar and Smt. Sita Devi respondents (parents-in-law). In order to substantiate the said charge prosecution is relying upon the extra judicial confession allegedly made by Prem Sagar and Shaman Sareen before Ravi Dutt Sharma PW6. In our view his evidence is not at all convincing and the learned trial court has rightly rejected it observing that it is a fabricated piece of evidence. Perusal of para nos. 36 and 37 of the impugned judgment reflect that the learned trial court has entered into a detailed discussion wherein reference to his two statements is there. He had made improvement in the court from his earlier statement Ex. DF recorded under section 161 Cr.P.C. He was also confronted with his another statement Ex. DG recorded by Judicial Magistrate on 14.9.1989 i.e. after the delay of more than one month from recording his aforesaid earlier statement Ex. DF. The view taken by the learned Magistrate with regard

to statement under section 164 Cr.P.C. is that the same has been got recorded by the police as it was apprehensive if this witness Ravi Dutt Sharma would stick to his statement and that is the reason that he was produced before the Magistrate for arriving at the said conclusion. The learned trial court has relied upon a judgment of Hon'ble Apex Court rendered in **Phool Chand vs State of Rajasthan 1976 CAR 363 (SC)**.

The so called extra judicial confession has been disbelieved by the learned trial judge on another material weakness in the case of the prosecution observing that Prem Sagar, Shaman Sareen and Sita Devi had already obtained anticipatory bail on 11.7.1989 from the concerned court and therefore, possibly there could not be any reason for two of them to confess their guilt before this witness on 8.8.1989.

We are of the considered view that the approach adopted by the trial court while discarding the extra judicial confession of the aforesaid witness is absolutely correct as it is of a very weak character.

Another factor which has been considered by the trial court in favour of the respondents is that Kamlesh Kumari was immediately taken to a private Nursing Home and then shifted to Civil Hospital, Nawanshahr by the respondents. Had there been any ill intention on their part, they would not have removed her for treatment. In this regard the learned trial court has relied upon a judgment of the **State of Rajasthan vs. Prithvi Raj** 1995 (Suppl.) (3) Supreme Court Cases, 410. We after re-scanning the entire

evidence in this regard are in agreement with the view already taken by the learned trial court.

Mr. Sidhu, the learned State counsel has laid much stress on certain injuries on the person of deceased to assert that pesticide was administered to her forcibly. We have also considered the case of the prosecution vis-a-vis the observation made by learned trial court in para no. 46 of the impugned judgment. No doubt there was abrasion of 1 cm on the right side of the bridge of the nose and some diffused swelling on the lateral aspect of the right fore-arm below the elbow joint besides some swelling under the medial aspect of the left fore-arm near the elbow joint, the learned trial court has observed that minor injury on the bridge of nose could be sustained during the process of forced vomitting. Dr. Surinder Gupta when stepped into witness box has stated that when Kamlesh Kumari was brought to the hospital, there was movement in all her limbs. We have noticed that the learned trial Judge is conscious of the fact that even if Dr. Nagin Dhaliwal had stated in cross-examination that the swelling on the arms could not be on account of striking of the arms against the bed but the observation is that the possibility of the same cannot be ruled. The categoric finding of the trial court is that had there been forced feeding of pesticide in this case in that eventuality the deceased was required to sustain more injuries by way of resistance. Another flaw which the learned trial court noticed is that it has come in the statement of SI Som Nath PW7 the

Investigating Officer had gone to Civil Hospital, Jalandhar on 15.7.1989 to meet Dr. Seth and moved application for seeking opinion from him, if the injuries on the person of the deceased could be the result of skirmish but the doctor refused to give any opinion in writing.

The learned trial court while taking into consideration all the facts especially the fact that there was no occasion for Shaman Sareen to administer poison to his wife when he had come all the way to take her and the children by bringing draft of Rs 30,000/- and making purchase of the air-tickets as well has dislodged the charge of section 302 IPC. We do not find any perversity in the approach of the learned trial court which would call for disturbing the view.

In our view no other point is left for consideration.

In **State of Punjab vs. Pohla Singh and anr. 2004(1) RCR (Criminal) 5,** while dealing with an appeal against acquittal, their Lordships have observed that there is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. But generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing towards the guilt of the accused and the other to his innocence, the view which is favourable to the accused should

be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented.

The appellate Court while considering appeal against an order of acquittal is to interfere only when there are compelling and substantial reasons for doing so. This was elucidated by the Apex Court in **Ramesh Babulal Doshi vs. State of Gujarat (1996) 9 SCC 225,** wherein it was observed as under:-

> " While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellant Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and then only reappraise the evidence to arrive at its own conclusions."

In **Pohla Singh**'s case (supra), **Ramesh Babulal Doshi**'s case (supra) and other three cases of the Apex Court rendered in **Shivaji Sahabrao Bobade and anr v. State of Maharashtra, 1973(2) SCC 793, Jaswant Singh v. State of Haryana, 2000(2) RCR (Criminal) 545 (SC) and State of Punjab v. Karnail Singh, 2003 AIR SCW 4065**, were also

taken into account.

After having minutely scrutinized the impugned judgment in the light of the evidence on record, and following the view taken by the Hon'ble Apex Court in the aforesaid judgments, we find no such demonstrable perversity in the same warranting into miscarriage of justice. Resultantly, Criminal Appeal No. 445-DBA of 1996 filed by the State of Punjab is hereby dismissed.

In view of the aforesaid discussion, no interference is called for in Criminal Revision No. 507 of 1996 filed by the complainant and the same is also dismissed.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

September 14, 2006
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For detailed judgment, see Criminal Appeal No. 445-DBA of 1996 State of Punjab Vs. Prem Sagar and others

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